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8 **IN THE SUPREME COURT**  
9 **STATE OF ARIZONA**

10 In the Matter of:

Supreme Court No. R-20-0031

11 **PETITION TO AMEND THE**  
12 **ARIZONA RULES OF CRIMINAL**  
13 **PROCEDURE**

**COMMENT OF**  
**THE STATE BAR OF ARIZONA**

14 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar  
15 of Arizona (the “State Bar”) hereby submits the following as its comment to the  
16 above-captioned Petition. The analysis and details for this Comment are  
17 substantially the product of the State Bar’s Criminal Practice and Procedure  
18 Committee, composed of a balance of prosecution and defense practitioners, and  
19 judicial members.  
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22 The Petition seeks to modify a vast majority of the Arizona Rules of Criminal  
23 Procedure to insert victim rights into most of the rules, while simultaneously  
24 maintaining Rule 39 which contains these rights. This is the third such petition  
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1 submitted by Arizona Voice for Crime Victims in as many years; its former, similar  
2 petitions have been denied. (R-18-001; R-19-0016).

3 Rule 39 sets forth the rights granted to crime victims as codified in the Victim's  
4 Bill of Rights set forth in the Arizona Constitution, article 2, section 2.1 ("VBR") and  
5 A.R.S. 13-4401 et. seq., known as the Victim Rights Implementation Act ("VIRA").

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7 Decisions of the Arizona Supreme Court have made clear that victim rights must  
8 be narrowly construed to deal only with procedural rules pertaining to victims. *Slayton*  
9 *v. Shumway*, 166 Ariz. 87 (1990). This means those rules that "define, implement,  
10 preserve and protect *the specific* rights *unique* and *peculiar* to crime victims as  
11 guaranteed and *created by* the VBR." *State v. Brown*, 194 Ariz. 340, 343 (1999);  
12 *Champlin v. Sargeant*, 192 Ariz. 371, 373 n. 2 (1998) (rulemaking power under VBR  
13 "extends only so far as necessary to protect rights *created by* the [VBR] and not  
14 beyond."); *State v. Hansen*, 25 Ariz. 287, 290 (2007) (same).

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16 Like the prior petitions, the instant Petition will effectively expand victim  
17 rights to procedural rules which neither pertain to nor directly implicate specific  
18 rights unique and peculiar to victims created by VBR. As Petitioner states, the goal  
19 of the proposed rule changes is to make "*all rules* governing criminal procedure"  
20 protect victim rights to be heard and to participate in criminal proceedings. (Petition  
21 at 5). This aim is inconsistent with the narrow construction given victim rights as it  
22 seeks to elevate crime victims to the status of party in a criminal proceeding—which  
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1 crime victims are not. *Lindsay R. v. Cohen*, 236 Ariz. 565 (App. 2015) (VBR did  
2 not make victims parties). Moreover, Petitioner relies on VBR’s general aims of  
3 affording victims “due process,” as well as its requirement that victims be “treated  
4 with fairness, dignity and respect,” but these are not rights “created by” VBR. Due  
5 process is a right similarly afforded criminal defendants by the federal and state  
6 constitutions, while the right to be “treated with fairness, respect and dignity” is  
7 afforded *all* participants in the civil and criminal process. *See Ariz. R. Sup. Ct., Rule*  
8 *81, Canon 2, Rule 2.2* (“Impartiality and Fairness”); *Rule 2.8(B)*(“Decorum,  
9 Demeanor...”). Both such rights pre-date the VBR.

12 Rule 39 of the Arizona Rules of Criminal Procedure sets forth *all* rights  
13 afforded crime victims on matters unique and peculiar to them. Of course, trial  
14 courts are bound by and must follow the provisions of that rule. Although Petitioner  
15 sets forth five cases in which it claims victim rights were violated by the trial court,  
16 whether violations actually occurred in the matters described is not established.  
17 Even assuming the facts as stated, every victim has “standing to seek an order, [or]  
18 to bring a special action...seeking to enforce any right or to challenge an order  
19 denying any right guaranteed to victims.” *A.R.S. §13-4437(A)*.

1 **CONCLUSION**

2 For the reasons stated above, the State Bar of Arizona respectfully requests  
3 that this Petition be denied.  
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6 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2020.

7 /s/ Lisa M. Panahi  
8 Lisa M. Panahi  
9 General Counsel

10 Electronic copy filed with the  
11 Clerk of the Supreme Court of Arizona  
12 this 1<sup>st</sup> day of May, 2020.

13 by: Patricia Seguin  
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